

REMARKS

This Amendment is being filed in response to the Final Office Action mailed on November 3, 2008 which has been reviewed and carefully considered. Entry of the present amendment and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-4, 6 and 8-11 remain in this application, where claims 1 and 8 are independent.

In the Final Office Action, the Examiner objected to the specification for lacking headings. Applicant respectfully declines to add the headings as they are not required in accordance with MPEP §608.01(a), and could be inappropriately used in interpreting the specification.

Section headings are not statutorily required for filing a non-provisional patent application under 35 USC 111(a), but per 37 CFR 1.77 are only guidelines that are suggested for applicant's use. (See Miscellaneous Changes in Patent Practice, Response to comments 17 and 18 (Official Gazette, August 13, 1996) [Docket No:

950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. ... [T]he Office will not require any application to comply with the format set forth in 1.77").

It is respectfully submitted that "should" as recited in MPEP §608.01(a) is suggestive or permissive, and not mandatory as in "must" or "shall". For example, 37 CFR 1.77(b) recites:

The specification should include the following sections in order: (Emphasis added)

Similarly, 37 CFR 1.77(c) recites:

The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type. (Emphasis added)

By contrast, 37 CFR 1.77(b)(5) recites:

(5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each compact disc shall be specified. (Emphasis added)

Thus, it is respectfully submitted that a distinction is made between "should" and "shall", where "should" is permissive, and

"shall" is mandatory. Accordingly, it is respectfully submitted that headings are not required in accordance with MPEP §608.01(a), and withdrawal of the objection to the specification is respectfully requested.

In the Final Office Action, claims 1-3 and 8-11 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 6,865,627 (Wu) in view of U.S. Patent Application Publication No. 2003/0067847 (Silvester). Claims 4 and 6 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Wu in view of U.S. Patent No. 5,802,032 (Jacobs). Further, claim 7 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Wu. It is respectfully submitted that claims 1-4, 6 and 8-11 are patentable over Wu, Silvester and Jacobs for at least the following reasons.

Wu is directed to a regulating real-time data capture rates to match processor-bound data consumption rates. As described on column 7, lines 26-54, various calculations are performed, such as calculating the amount of time to transition from play-mode to stop-mode

It is respectfully submitted that Wu does not teach or suggest

the present invention as recited in independent claim 1, and similarly recited in independent claim 8 which, amongst other patentable elements, recites (illustrative emphasis provided):

wherein the control means comprise means for retrieving playback mode control information stored on the storage medium, and means for calculating a buffer refilling time depending on the playback mode control information.

Calculating the buffer refilling time depending on the playback mode control information stored on the storage medium is nowhere disclosed or suggested in Wu. Rather, Wu discloses calculating times including transition times, which is a relatively complicated task, as described on page 2, lines 18-22 of the present application. Calculating the buffer refilling time depending on the playback mode control information stored on the storage medium provides substantial benefits, such as simplifying scheduling disc spin-ups and spin-downs, as described on page 3, lines 12-26. Silvester and Jacobs are cited to allegedly show other features and does not remedy the deficiencies in Wu.


Accordingly, it is respectfully requested that independent claims 1 and 8 be allowed. In addition, it is respectfully

submitted that claims 2-4, 6 and 9-11 should also be allowed at least based on their dependence from independent claims 1 and 8 as well as their individually patentable elements.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded. And in particular, no Official Notices are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 
Dicran Halajian, Reg. 39,703
Attorney for Applicant(s)
December 23, 2008

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101